YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**Laws of Conversion and Circumcision (3)**

**Rav David Brofsky**

***Horato She-Lo Be-Kedusha Ve-Leidato Be-Kedusha***

**Marriage to a *Kohen* of a Child Who Was Conceived Before her Mother’s Conversion**

 In the previous two *shiurim*, we dealt with a case in which a non-Jewish woman conceived a child, converted, and then gave birth.

Last week, we noted that the Talmud (*Yevamot* 35a) teaches that a *giyoret* (a female convert) must wait three months before marrying and living with her husband. This law in known as "*havchana*." The *gemara* explains that the rabbis hoped to prevent a case in which a woman converts and then gives birth, and we are then uncertain whether she conceived before or after her conversion. The *gemara* states that the reason for this prohibition is "in order to distinguish between children conceived in sanctity [i.e., after conversion] and children conceived out of sanctity” –*"horato she-lo be-kedusha ve-leidato be-kedusha*." We discussed the scope of the prohibition and situations in which it may not apply today.

 The *gemara* maintains that it is important to distinguish between a child who was "*horato she-lo be-kedusha ve-leidato be-kedusha*" and a child who was conceived after the conversion. But aside from any possible spiritual or metaphysical concerns, are their practical ramifications to this question? Are familial relations established from the time of conception, when the mother was not Jewish, or from the time of birth, after the conversion, and are there any consequences? Although this topic is far broader than this *shiur* allows, we will give a brief overview of the fundamental issues and some of the practical ramifications.

We will begin by taking a closer look at the status of a child who was converted in utero.

**The Conversion of a Pregnant Woman**

 We discussed the matter of the conversion of a pregnant woman in depth in a recent [*shiur*](https://www.etzion.org.il/en/tevilat-ha-ger-%E2%80%93-conversion-pregnant-woman). We noted that the Talmud (*Yevamot* 78b) teaches: "If a pregnant gentile woman converted, her son [who was a fetus at the time of the conversion] does not require immersion.” The Talmud (ibid.) explains that the principle that the child born of a pregnant gentile woman who converts does not require immersion must be understood in light of a broader debate regarding the halakhic status of a fetus – i.e., whether it is *"yerekh imo*,”“considered the thigh," or whether "the fetus is not considered the thigh." This debate appears in numerous places in the Talmud.

 According to the position that maintains that *ubar yerekh imo*, the fetus in our case is considered part of the mother, and it is therefore Jewish due to being part of its mother who converted. However, according to the position that maintains that *ubar lav yerekh imo*, the fetus is considered a distinct entity that immerses in the *mikveh* alongside its mother. According to this second approach, the *gemara* explains, the mother is not considered to be am interposition (*chatzitza*) between the fetus and the *mikveh*, as “this is its natural manner of growth."

 We discussed how the *Rishonim* and *Acharonim* explore whether, especially according to the second view, the child is considered a convert or a born-Jew. For example, the *Rishonim* question whether the circumcision is viewed as a regular *brit mila* or a circumcision for the sake of conversion.

 The Ramban (*Yevamot* 47b) maintains that according to the view that *ubar lav yerekh imo*, the fetus is considered to be a convert, and therefore the *brit mila*, for a boy, is the circumcision of a convert. If the *brit mila* is performed for the sake of conversion, it would appear that a *beit din* should be present, as a *beit din* should be present at the circumcision of any convert (YD 268:3). Furthermore, if the child is considered a convert, the *brit mila* should not be performed on Shabbat, as the circumcision of a convert must be performed on a weekday. The *Nemukei Yosef* (*Yevamot* 16a; see also Ritva 47b) cites the *Ra'ah*, who disagrees, and maintains that the child is considered fully Jewish at birth.

 The *Acharonim* raise number halakhic differences between these approaches. For example, the *Dagul Mei-Revava* (YD 268), writes: "If the *beit din* did not know that she [the female convert] was pregnant, there is much to say, and it depends upon [a debate between] great trees [i.e. halakhic authorities]." Many *Acharonim* assume that he refers to the question of *ubar yerekh imo* or *ubar lav yerekh imo*, and that according to the position of *ubar lav yerekh imo*, the child is considered to have converted in the presence of *beit din*, which must of course be aware of the pregnancy.

 Similarly, the *Acharonim* discuss whether this child, upon reaching his or her bar or bat mitzvah age, may protest (*mocheh*) and undo his conversion, as other child converts (*ger katan*) may do (see *Ketubot* 11a). The *Tiferet Moshe* (YD 268) writes that since we follow the view that maintains that *ubar yerekh imo*, the child may not protest when he is older, as he is not considered a convert at all. The *Avnei Milu'im* (4:2) concurs.

 We noted that the *Acharonim* point to another Talmudic passage (*Yevamot* 46a) that teaches that although the mother converted while she was pregnant, the child, if he is a firstborn, is obligated in *pidyon ha-ben*. This appears to support the position that maintains that the child is not considered to be a convert. We discussed this question in great depth in the previous *shiur*.

The question of how to understand the status of a child born to a Jewish mother who was conceived "*she-lo be-kedusha*" may affect additional *halakhot* as well. (See *Shulchan Arukh*, EH 4:22-23, and CH 7:1).

**A Child Converted In Utero – Forbidden Sexual Relations (*Arayot*)**

Whether or not a child was conceived before or after the conversion may have practical ramifications relating to the familial identity of the child. Technically speaking, a Jewish child is not legally related to his or her non-Jewish father. Therefore, the *mishna* (*Yevamot* 97b) teaches:

With regard to a female convert whose sons converted with her, they do not perform *chalitza* for each other’s wives, and they do not perform levirate marriage with them [as their conversions are considered rebirth, and they are considered unrelated]. This is so even if the conception of the first son was not in the sanctity of Israel [i.e., the mother had not yet converted when she conceived him], but his birth was in the sanctity of Israel, as his mother had converted by the time she gave birth to him, whereas the second son was both conceived and born in sanctity. [The first son is considered a convert, who is unrelated to his brother.]

According to the *mishna*, the brother who was converted in utero is not legally considered to be related to his brother from their father, and therefore the laws of *yibum* and *chalitza* do not apply to them.

 Later, the Talmud teaches regarding two twin brothers:

Come and hear: Two twin brothers … who were not conceived in sanctity and only their birth was in sanctity, they do not perform *chalitza* or levirate marriage, but they are liable for engaging in intercourse with a brother’s wife.

According to this passage, if two twin brothers were converted in utero, they are not legally considered brothers from their father and are therefore exempt from the laws of *yibum* and *chalitza*. However, they are considered brothers from their mother, and therefore one brother may not have relations with the wife of the other, even after divorce or death.

 Interestingly, Rashi (see also Ramban and Rashba) explains that the *gemara* is referring not only to twins; rather, all children born after the mother's conversion are considered to be siblings from their mother's side (*achim min ha-em*). The *Dagul Mei-Revava* (YD 269) suggests that this is the Rambam's view (*Hilkhot Issurei Bi'ah* 14:20) as well. Rashi and other *Rishonim*, however, view the child as Jewish at birth, and not a convert, in which case he is certainly related to other children born to the same mother after conversion.

 However, the *Nemukei Yosef* (Rif, *Yevamot* 3b, as explained by *Beit Yosef,* YD 269) explains that only twins are considered (Biblically) to be related in this case. The *Shakh* (YD 269:6) explains that this is the Rambam's view as well. He appears to believe that the child is considered to be a convert, in which case he is not related to his sibling unless he/she is a twin.

**A Child Converted In Utero – Testimony (*Edut*)**

 The Talmud (*Yevamot* 22a) teaches that siblings who converted after birth may testify together; they are not disqualified due to their familial relationship. The *Shulchan Arukh* (CM 33:11) cites this ruling and adds that "even two twins who converted may testify."

 The *Beit Yosef* (ibid.) questions whether twins who were conceived while the mother was not yet Jewish (*she-lo be-kedusha*) and born after the mother converted (*be-kedusha*) are disqualified from testimony *mi-derabbanan*. The *Darkhei Moshe* (ibid.) rules that in this case, the twin brothers are not disqualified and may both testify. The *Shakh*, consistent with his view regarding sexual relations between siblings born to the same mother (above), insists that that may not testify together, *mi-de'oraita*, as they were considered to have both been born Jewish, from the same mother.

 Here too, this question may depend upon the status of the child upon birth – i.e., as a convert or as a Jew.

**The Prohibition of Marriage Between a Convert and a *Kohen***

Is a female child converted in utero permitted to marry a *Kohen*? On the one hand, we might suggest that this depends upon whether the child is viewed as a convert, in which case she may not marry a *Kohen*, or the daughter of a convert, in which case she may be permitted. We discussed this question above. However, there may be another way to answer this question.

The Talmud (*Yevamot* 61b) teaches that a *Kohen* is prohibited from having relations with a *giyoret* (convert). Since this ban does not appear explicitly in the Torah, the *Rishonim* disagree regarding the source of this prohibition.

 Some *Rishonim* explain that a *giyoret* is prohibited to a *Kohen* because she is considered to be a “*zona*.” The verse says: “They [the *kohanim*] shall not marry a woman who is a *zona* or who is desecrated, and they shall not marry a woman who is divorced from her husband, for he [the *kohen*] is holy to his God” (*Vayikra* 21:7). The term “*zona*” according to the Talmud, refers not to a woman who is promiscuous or to a prostitute, but in this case refers to a woman who engaged in prohibited sexual relations. Indeed, the Rambam (*Hilkhot Issurei Bi’ah* 18:3) writes:

Based on the Oral Tradition, we learned that the term *zona* used by the Torah refers to one who is not a native-born Jewess or a Jewish woman who engaged in relations with a man she was forbidden to marry, violating a prohibition that is universally applicable, or a woman who engaged in relations with a *challal* even though she is permitted to marry him… Similarly, a female convert or a freed [maid-servant] – even if she was converted or freed when she was less than three years old – since she is not a native-born Jewess, she is deemed a *zona* and is forbidden to [marry] a priest.

This reason is given by other *Rishonim* as well, and it is implied by the Talmud (*Yevamot* 61b).

 The *Rishonim* disagree as to why the convert is halakhically considered to be a *zona.* Some *Rishonim* (see Rashi, *Yevamot* 61a, s.v. *ela*; Tosafot, *Avoda Zara* 36b, s.v. *mishum*) say that it is because we assume that she most likely had sexual relations with a non-Jew. If so, those who did not have relations with a non-Jew, like the girl who converted under three years old, are only prohibited *mi-derabbanan* (see *Ritva*, *Kiddushin* 78a, s.v. *tanya*). The *Arukh Le-Ner* (*Yevamot* 76a) writes that the child is only prohibited due to a doubt or a suspicion that she may have been raped, and therefore if we are certain that she did not have relations, she is permitted to a *Kohen*. Others (see Ritva, ibid.) suggest that according to these opinions, “any woman who was born a non-Jew has the status of a *zona*.”

 Other *Rishonim* cite a different Talmudic passage as a source for this prohibition. The *gemara* (*Kiddushin* 78a) teaches:

It states with regard to priests: “Neither shall they take as their wives a widow, nor her that divorced; but they shall take virgins of the seed of the house of Israel” (*Yechezkel* 44:22).

Raavad (*Issurei Bi’ah* 18:3) explains that a convert is prohibited to a *Kohen* due to the verse found in *divrei kabbala* (i.e., the prophets), which teaches that a *Kohen* must only marry a woman from *zera* *Yisrael*,the seed of the house of Israel. This may explain why even a woman who converted under the age of three is prohibited to a *Kohen*.

 May the daughter of a convert marry a *Kohen*? The *mishna* (*Kiddushin* 77a) teaches: “R. Eliezer ben Yaakov says: If there was an Israelite who married a female convert, his daughter is fit to marry into the priesthood, and similarly if there was a convert who married a Jewish woman, his daughter is fit to marry into the priesthood.” Accordingly, the *Shulchan Arukh* (EH 7:21) rules:

And if she were on one side Israelite, such as if a male convert married an Israelite woman or an Israelite man married a female convert, the daughter is permitted to a *Kohen* even in principle.

If either the mother or the father is a convert, then their daughter may marry a *Kohen*.

 What if both parents are converts? The *mishna* (*Kiddushin* ibid.) cites a debate between R. Eliezer ben Yaakov and R. Yosi:

R. Eliezer ben Yaakov says: … but if there was a male convert who married a female convert, his daughter is unfit to marry into the priesthood. With regard to both converts and emancipated Canaanite slaves, their daughters are unfit to marry into the priesthood even up to ten generations. This *halakha* applies to the offspring until his mother is born Jewish. R. Yosi says: Even if there was a male convert who married a female convert, his daughter is fit to marry into the priesthood.

While R. Eliezer ben Yaakov maintains that the daughter of two converts may not marry a *Kohen*, R. Yosi permits. The *gemara* (ibid. 78a) explains that R. Eliezer bar Yaakov and R. Yosi disagree as to the meaning of the verse in *Yechezkel*:

And all of the *Tanna’im* who have a dispute with regard to the fitness of the daughter of a convert for marrying into the priesthood expounded a single verse. It states with regard to priests: “Neither shall they [*Kohanim*] take as their wives a widow, nor her that divorced; but they shall take virgins of the seed of the house of Israel” (*Yechezkel* 44:22)… R. Eliezer ben Yaakov holds: “Of the seed” [indicates that not all of the seed must come from the house of Israel], and even if part of the seed [is from the house of Israel, that is sufficient to allow her to marry a priest]. R. Yosi [who holds that even the daughter of two converts is permitted to marry into the priesthood] holds [that “of the seed of the house of Israel” means] one who was seeded [i.e., conceived] in Israel, [and the children of converts were conceived by Jewish parents].

The *gemara* (ibid. 78b) relates a very interesting conclusion to this debate:

R. Hamnuna says in the name of Ulla: The *halakha* is in accordance with the opinion of R. Yosi, and similarly, Rabba bar bar Chana says: The *halakha* is in accordance with the opinion of R. Yose. And from the day the Temple was destroyed, the priests were accustomed to act with a higher standard for themselves, in accordance with the opinion of R. Eliezer ben Yaakov [and they would marry the daughter of a convert only if one parent was born Jewish].

Ulla and Rabba bar bar Chana explicitly rule in accordance with the lenient view of R. Yosi, but the *gemara* relates that the *Kohanim* are accustomed to act in accordance with the stricter view of R. Eliezer ben Yaakov. The *gemara* continues:

R. Nachman says: R. Huna said to me: If a priest comes to consult [with us as to whether or not he should marry the daughter of two converts], we instruct him not to, in accordance with the opinion of R. Eliezer ben Yaakov. But if he married her, we do not remove her from him, in accordance with the opinion of R. Yosi [as the *halakha* follows his opinion, as stated above].

The *Shulchan Arukh* (EH 7:21) rules according:

If a male convert marries a female convert who then gives birth to a daughter, she may not in principle be married to a *Kohen*, even the daughter's daughter for several generations, despite the fact that her conception and birth were in holiness. And if she was [nonetheless] married to a *Kohen*, she does not go out [necessarily from her marriage].

Therefore, *le-khatchila*, a *Kohen* is not supposed to marry the daughter of two converts.

 May the daughter of a non-Jewish man and a Jewish woman marry a *Kohen*? The Talmud (Yevamot 45a) discusses whether the child of a non-Jew and a Jewish woman is considered to be a *mamzer*. The *gemara* concludes:

All of the *Amoraim* who render the offspring [of a union between a non-Jew and a Jewish woman] fit to enter the congregation of Israel agree that the offspring has “flawed lineage” and is forbidden to marry into the priesthood. This is derived from an *a fortiori* inference from the *halakha* of a widow, as follows: Just as in the case of a widow who is married to a High Priest, where the prohibition that pertains to her is not equally applicable to all Jews [i.e., only a High Priest is prohibited from marrying a widow], and nevertheless her child from that union will have flawed lineage, so too with regard to this [woman who engaged in relations with a gentile or slave], where the prohibition that pertains to her is equally applicable to all Jews, isn’t it logical that her child from that union will have flawed lineage?

This position is cited by the Yerushalmi (*Yevamot* 4:5) as well.

Despite this being the view of “all of the *Amoraim*,” the *gemara* later (ibid. 45b) concludes: “And the *halakha* is that with regard to a gentile or slave who engaged in intercourse with a Jewish woman, the lineage of the offspring is unflawed, whether she was an unmarried or a married woman.” The *Rishonim* offer different explanations for this apparent contradiction.

The Rif (*Yevamot* 15a) notes that the *gemara* is indeed unclear and that this matter is debated by his teachers. The Rosh (*Yevamot* 4:30) rules that the second passage referred only to whether the daughter may marry another Jew, but she may certainly not marry a *Kohen*. The Ramban, in his *Sefer Ha-Zekhut* (Rif, ibid.), rules that the daughter of a non-Jew and a Jewish woman should not marry a *Kohen*, but if they are married, the *beit din* may not force them to divorce. The Rambam (*Hilkhot Issurei Bi’ah* 15:3) appears to rule (see *Beit Yosef*, EH 4) that this woman may marry a *Kohen*, in accordance with the conclusion of the *gemara*. Finally, the Maharshal (*Yam shel Shlomo*, *Yevamot* 4:38) rules that although the marriage between the daughter of a non-Jew and a Jewish woman and a *Kohen* may be considered to be distasteful, we do not obligate them to divorce and their offspring are not considered to be *challalim*.

 R. Yosef Karo, in his *Shulchan Arukh* (EH 7:17), rules: “A non-Jew and a slave that have relations with an Israelite girl and a girl is born from them, the daughter is not allowed to marry a *Kohen*.” Interestingly, while the Rema does not comment in the *Shulchan Arukh*, in his responsa (18; see also *Darkhei Moshe*) he rules in accordance with the *Maharshal* and describes this marriage as *pagum u-mekulkal*, but not necessarily prohibited.

 This matter was later debated among the *Acharonim*. Some (R. Akiva Eiger, Responsa, *Mahadura Kama* 91; *Arukh Ha-Shulchan*, EH 7:35) adopted the Rema’s lenient approach, while others (see *Beit Meir*, EH 4:1) accepted the stringent view of the Rosh.

 Contemporary *poskim* have addressed this matter as well. R. Moshe Feinstein (*Iggerot Moshe* EH 1:5) rules that a rabbi should not perform a wedding between a *Kohen* and a daughter of a non-Jew and a Jewish woman. R. Shalom Messas (*Shemesh U-Magen* EH 3:58) and R. Shlomo Amar (*Shema Shlomo* EH 5:8) rule that if that couple is already “connected to each other,” and they are determined to be married, this case is considered to “*sefeik sefeika*”: Since there is a doubt whether there is at all a prohibition (Rambam), and even if there is, it may only be “distasteful” (*Maharshal*) and not really prohibited, in this case the rabbi may perform the wedding. R. Ovadia Yosef (Yabi’a Omer EH 9:7 and 10:14) raises another doubt – i.e., whether the groom is really a *Kohen*, as nowadays, the lineage of many *Kohanim* is doubtful.

 We discussed above the marriage of a convert to a *Kohen*, the marriage of a daughter of two converts to a *Kohen*, and the daughter of a non-Jew and a Jewish woman to a *Kohen*. We also noted that the daughter of a Jewish man and a *giyoret*, or a male convert and a Jewish woman, may marry a *Kohen*.

 We can now return to our original question: May a woman who is the daughter of a Jewish man and who was herself converted in utero with her mother marry a *Kohen*? This question is not addressed in the Talmud or explicitly by the *Rishonim*. As we suggested above, according to those who view a fetus who converted with her mother in utero as a convert, she would be prohibited to a *Kohen*. But there may be another way to address this question.

 We noted above that R. Eliezer ben Yaakov and R. Yosi disagree regarding the interpretation of the verse: “Neither shall they [*Kohanim*] take as their wives a widow, nor her that divorced; but they shall take virgins of the seed of the house of Israel” (*Yechezkel* 44:22). R. Yosi, who permits a daughter of two converts to marry a *Kohen*, explains: “One who was seeded [i.e., conceived] in Israel, and the children of converts were conceived by Jewish parents” (*Kiddushin* 78a).

 Rashi (ibid., s.v. *mi*; see also *Piskei Ha-Rid*) explains that “one who is seeded” refers to “once who was conceived in sanctity.” This, of course, implies that if the woman conceived the child before she converted, i.e., *she-lo be-kedusha*, she is not be permitted to marry a *Kohen*, even according to R. Yosi. The Rambam (*Hilkhot Issurei Bi’ah* 19:12) implies this as well. The *Chelkat MeChokek* (EH 7:29) and *Beit Meir* (EH 7:42) concur.

 Therefore, it appears that a daughter who converted with her mother in utero is also prohibited to a *Kohen*, either because she is considered to be a *giyoret* herself and/or because she was conceived *she-lo be-kedusha*.

**Appendix: Leniencies**

 It is important to note although the Talmud teaches, and the *Shulchan Arukh* rules, that a *Kohen* may not marry a *giyoret*, even if she converted under the age of three, the *Acharonim* were lenient in certain situations.

 Some note that R. Shmuel ben Moses de Medina (*Maharshdam*, EH 235) ruled that "*Kohanim* in our times are not definite *Kohanim*," and therefore, at times, certain leniencies may be applied. Similarly, R. Moshe Feinstein (*Iggerot Moshe*,EH 4:11 and 4:39) ruled that some people who claim to be *Kohanim* are not really *Kohanim*, especially those who come from non-religious families. R. Gedalya Schwartz, former Av Beit Din of the Beit Din of America, and R. Dovid Cohen, world renowned *posek* of Congregation Gvul Ya'avitz, rule accordingly.

 Concerning the girl who converted under the age of three, R. Eliyahu Abergel, former head of the Jerusalem Rabbinic courts, permits a woman who was converted under the age of three to marry a *Kohen* based upon numerous *sefeikot* (doubts) regarding the status of *Kohanim* nowadays and the origin of the prohibition of marrying a *Kohen* (*Dibberot Elyahu*, 137). R. Ephraim Greenblatt, a close student of R. Moshe Feinstein and author of the *Rivevot Ephraim*, also writes that, with R. Feinstein's approval, he permitted a young woman who was converted at birth to marry a *Kohen* (*Iggerot Malki* *Rabbanan* 61; see also *Yabi'a Omer* EH 7:11).

 A halakhic authority should be consulted regarding these sensitive halakhic matters.